

Appeal Decision

Site visit made on 12 December 2016

by C Jack BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28TH December 2016

Appeal Ref: APP/R3650/W/16/3155800

Newlands, 132 Horsham Road, Cranleigh, Surrey GU6 8DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs W Ashton against the decision of Waverley Borough Council.
 - The application Ref WA/2016/0745, dated 17 March 2016, was refused by notice dated 14 July 2016.
 - The development proposed is the construction of two detached houses on land to the rear of Newlands.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of two detached houses on land to the rear of Newlands at Newlands, 132 Horsham Road, Cranleigh, Surrey GU6 8DY in accordance with the terms of the application, Ref WA/2016/0745, dated 17 March 2016, subject to the Schedule of Conditions to this Decision.

Application for costs

2. An application for costs was made by Mr and Mrs W Ashton against Waverley Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposed development on protected species, with particular regard to great crested newts.

Reasons

4. Newlands is a large detached house set well back from the road behind a wooded area, within which there is a large pond. There is a small garden pond to the side of the main house and a further fairly large pond set in a wooded area of the neighbouring garden, identified on the location plan as Vachery Bungalow. To the rear of the house there is a substantial open area of lawned garden, which has borders of established trees and shrubs, and there is a further wooded area beyond the rear boundary leading to open countryside.
 5. It is proposed to construct two detached houses, each with a detached double garage, on the rear lawn of Newlands. The site would be accessed via the existing access to Newlands from Horsham Road and an existing outbuilding would be demolished to facilitate access to the rear garden. The sole matter at issue between the main parties is whether additional information, specifically in the form of a presence/absence survey for great crested newts is required in
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order to establish that this species would not be harmed by the proposed development. The great crested newt is a European protected species, under Schedule 2 of the Conservation of Habitats and Species Regulations 2010.

6. A Preliminary Ecological Appraisal incorporating Extended Phase 1 Habitat Survey (PEA) in relation to the proposed development was carried out by Arbtech Consulting Limited and submitted to the Council in support of the planning application. The Council has not disputed that the PEA was carried out by a suitably competent and qualified person and I see no significant reason to doubt this was the case. The PEA considered a number of habitats and species and found that further evaluation was required in relation only to bats.
7. With regard to amphibians, including great crested newts, the PEA found that there would be no impact from the proposed development. This was largely because the large expanse of mown lawn that exists where the two houses, garages, and parking areas would be constructed was not found to provide suitable habitat for amphibians. The PEA further found that the vegetated boundaries of the site would be the only area that could potentially be used by amphibians and that the proposed layout would provide opportunities for the boundary areas to provide a protected buffer zone, resulting in no impact or risk to amphibians.
8. The appeal site does not include the areas where nearby ponds have been identified, and these would remain undeveloped. The appeal site also does not lie between the nearby ponds or sever links between them. The PEA advises that a Habitat Suitability Index (HSI) assessment carried out on the large pond and the second much smaller pond at Newlands specifically found that these had poor suitability for great crested newts. While Surrey Wildlife Trust (SWT) advises that newts are known to be present within the wider countryside, with habitat connectivity with the proposed site, and the biodiversity records held include records of great crested newts within 2km of the site, the PEA advises that all of these were found to be over 1km away and furthermore separated from the site by major terrestrial barriers, albeit the specific nature of these barriers is not set out.
9. The Council does not specifically dispute the aforementioned findings or the general methodology employed in the PEA. Rather, its principle concerns lie in no ensuing detailed presence or absence survey work having been carried out with specific regard to great crested newts. It is also concerned that that other ponds within 500m have not been directly assessed for great crested newt potential, as is recommended in Natural England's (NE) standing advice for local planning authorities for assessing the impacts of development on great crested newts.
10. The extant Government circular 06/2005 'Biodiversity and geological conservation – statutory obligations and their impact within the planning system' sets out at paragraph 99 that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. It further advises that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.

11. The evidence in the PEA clearly indicates that the appeal site is essentially not suitable habitat for amphibians, being largely residential with 'manicured' lawns. Taken together with the HSI assessment that the nearby ponds have poor suitability for great crested newts, and the absence of any records of great crested newts being present on the site or within 1km, I consider that there would be no reasonable likelihood of great crested newts being present on or near the site and affected by the proposed development. Furthermore, even if newts were present, it does not automatically follow that they would be affected adversely by the proposed development, and there is no significant evidence before me to suggest that this would be likely to be the case here.
12. The NE standing advice further advises that areas may be able to be excluded from survey including if: great crested newts are highly unlikely to be present, for example because the habitat is unsuitable or records show no newts nearby; the planned development wouldn't affect the newt population, for example because of barriers the newts can't cross; or where a HSI has been used to calculate habitat quality and likelihood of great crested newt presence.
13. Having regard to this, and the related findings of the PEA, including the lack of presence records within 500m and 1km, I consider that requiring a further detailed presence or absence survey is not necessary in this case. I have considered the Council's view that probable absence is unreliable and cannot be taken as appropriate evidence of absence, and I accept that probable absence is not the same as conclusive absence. However, the advice in circular 06/2005 is clear that surveys for protected species should not be required unless there is a reasonable likelihood of the species being present and affected by the development. This stance is reinforced in the Planning Practice Guidance¹, which further advises that ecological assessments or surveys should be proportionate to the nature and scale of the development proposed and the likely impact on biodiversity.
14. Nonetheless, the PEA recommends, amongst other things, the retention of undeveloped buffer zones around the south east and south west boundaries of the site in order to protect any wildlife within them, and the appellants have expressed their intent that the recommendations of the PEA should be implemented in full. This would represent an opportunity to incorporate enhancements in relation to biodiversity around the development, as is encouraged by Paragraph 118 of the National Planning Policy Framework, which would be capable of being accommodated on the site and could be secured by condition.
15. For these reasons, I conclude that the proposed development would not harm protected species, with particular regard to great crested newts. I therefore find no conflict with saved Policy D5 of the Waverley Borough Local Plan 2000, which seeks to ensure that development takes account of nature conservation issues, including by not permitting development that would materially harm a protected species of animal or plant, or its habitat, or with Paragraph 118 of the Framework.

Conditions

16. I have considered the lists of conditions suggested by the Council and the Appellant and I have adapted them for clarity or conciseness where

¹ Planning Practice Guidance: Paragraph 016 Reference ID 8-016-20140612

appropriate. In addition to the standard time limit, I have imposed a condition specifying the approved plans as this provides certainty, and conditions relating to external materials and hard and soft landscaping, which are necessary in the interests of the appearance of the development and biodiversity. Conditions relating to tree protection measures are necessary in the interests of the trees to be retained, including those subject to a tree preservation order. While a tree method statement was provided to the appeal, this did not include some detailed plans referred to within it, including the tree protection plans proposed for demolition and construction. It is therefore necessary for such details as required in relation to tree protection to be submitted to the local planning authority for consideration in a holistic manner. A condition relating to the implementation of the recommendations of the PEA and Bat Report is necessary in the interests of biodiversity, including protected species. I have not imposed a condition in relation to the submission of details of services to be installed to the local planning authority, in addition to the Building Regulations, as it has not been justified that this is necessary in relation to the development proposed.

Conclusion

17. For these reasons, and having regard to all matters raised, I conclude that the appeal should be allowed.

Catherine Jack

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 15/20/BP; 15/20/SP; 15/20/1; 15/20/2 Rev A; 15/20/3 Rev A; 15/20/4 Rev A; and 15/20/5.
- 3) No development shall commence until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall commence until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include means of enclosure, hard surfacing materials, lighting and the biodiversity buffer zone recommended in the ARBTECH Preliminary Ecological Appraisal. Development shall be carried out in accordance with the approved details prior to the first occupation of any part of the development or in accordance with the programme specified in the approved details. The buffer zone shall thereafter be maintained and retained as such at all times.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) No development shall commence, including any site remediation or groundwork preparation, until a detailed, scaled Tree Protection Plan 'TPP' and related Arboricultural Method Statement has been submitted to and approved in writing by the local planning authority. This shall include details of the specification and location of exclusion fencing, ground protection and any development activity that may take place within the Root Protection Area of trees shown to scale on the TPP, including any installation of temporary access road construction and low impact services installation. It shall also include a detailed scheme of supervision and monitoring for the proposed protection measures. All works, supervision and monitoring shall be carried out in accordance with the approved details.
- 7) No development shall commence until cross sections /details indicating the proposed finished ground levels, surface materials including sub-base and depth of construction and method/materials used for edging, within protected zones around retained trees shall be submitted to and approved in writing by the local planning authority. All works shall be carried out in accordance in accordance with the approved details.

- 8) The recommendations and mitigation measures set out in the submitted and approved ARBTECH Preliminary Ecological Appraisal and Bat Presence/Likely-absence Survey shall be implemented in full and development shall take place in accordance with those recommendations and measures.